

Worksession

Agenda Item #	8
Meeting Date	July 9, 2007
Prepared By	Barbara B. Matthews City Manager <i>BBM</i>
Approved By	

Discussion Item	Living Wage Law
Background	<p>On March 12, 2007, Seth Grimes, a resident of Ward One, addressed the Council concerning enactment of a Living Wage Law. Mr. Grimes suggested that the City model the proposed legislation on the laws enacted by Montgomery County and the State of Maryland.</p> <p>In addition to Montgomery County and the State of Maryland, there are a number of jurisdictions across the United States have some form of living wage policies. As indicated on the The Living Wage Resource Center website of The Association of Community Organizations for Reform Now (ACORN), there are a number of policy questions that must be considered and answered in crafting a living wage ordinance.</p> <p>To facilitate the Council's initial discussion concerning this matter, staff has prepared the following summary of the policies of Montgomery County, the State of Maryland, and the cities of Charlottesville and Alexandria, Virginia. Staff can provide additional data on the policies of other jurisdictions at a future date should the Council desire this information.</p> <p><u>Montgomery County</u></p> <p>Montgomery County's Living Wage Law was enacted by Bill No. 5-02 on June 11, 2002. The legislation, which took effect on July 1, 2003, requires that certain contractors pay each employee who provide services to the County a certain hourly wage. The initial hourly wage was \$10.50 and was to be adjusted annually to reflect increases in the Consumer Price Index for the Washington-Baltimore metropolitan area. The rate effective July 1, 2007 is \$11.95 per hour.</p> <p>Contractors who offer health insurance receive a credit against this wage rate. For example, a contractor pays \$2,080 per year for health insurance coverage, which is the equivalent of \$1 per hour annualized. The contractor could credit that amount against the annualized wage of \$11.95 per hour and pay its employee \$10.95 per hour.</p> <p>Montgomery County's legislation covers for-profit contractors with ten or more employees and \$50,000 in County contracts. Exempt contracts include those for services needed immediately to address a public health or safety emergency, sole source contracts, contracts for utility services provided by a regulated public utility, contracts with public entities, and employers who are expressly precluded by federal or state law from complying.</p> <p>Montgomery County's legislation also provides certain exceptions to the wage requirement. The hourly wage rate does not apply to any employee who is covered by a collective bargaining agreement, participates in a government-operated or</p>

government-sponsored program that restricts earnings or wages to a level below the mandated wage level, or who is in a summer youth employment program.

State of Maryland

House Bill 430, enacted during the 2007 Session, requires State contractors to pay their employees a "living wage." The hourly wage rate varies by geographic region. For fiscal year 2008, the living wage is set at \$11.30 in Montgomery, Prince George's, Howard, Anne Arundel, and Baltimore counties and Baltimore City. It is set at \$8.50 for all other areas of the State. The Commissioner of Labor and Industry will adjust these rates on an annual basis by the percentage increase or decrease in the Consumer Price Index for All Urban Consumers for the Washington-Baltimore metropolitan area for inflation on an annual basis by the Commissioner of Labor and Industry.

State contractors or subcontractors with a State contract for services valued at greater than \$100,000 must pay the living wage to employees who spend at least half their time during any work week working on the State contract. The living wage requirement does not apply to employees who are under the age of 18 or who work full-time for less than 13 consecutive weeks for the duration of the contract.

Employers who provide health insurance coverage to workers may reduce the wage rate by all or part of the hourly cost of the employer's share of the premium for each employee. The legislation also authorizes the Commissioner of Labor and Industry to allow an employer who contributes to its employee's deferred compensation plan to reduce the living wage by the hourly cost of the employer's contribution, up to \$0.50 per hour.

State contractors are not required to pay a living wage if doing so would conflict with a federal requirement or if they are:

- providing services needed immediately to prevent or respond to an imminent threat to public health or safety;
- a public service company;
- a nonprofit organization;
- another State agency;
- a county government or Baltimore City; or
- a firm with 10 or fewer employees that has a State contract valued at less than \$500,000.

Charlottesville, Virginia

The City of Charlottesville's living wage requirement is applicable to every city contract for non-professional services, awarded after a process of competitive sealed bidding. The contractor is required to pay each employee performing services on

	<p>property owned or controlled by the City a wage no less than the lowest hourly wage paid by the City to its own employees.</p> <p>The aforementioned provision does not apply to contracts for construction services or construction management services, contracts for mail delivery services, or contracts for the purchase or lease of goods. The legislation provides for other exemptions, including but not limited to, contracts with public bodies and contracts procured through cooperative procurements, sole source procurements, and emergency procurements.</p> <p><u>Alexandria, Virginia</u></p> <p>The City of Alexandria's living wage ordinance applies to all service contracts on city-owned or city-controlled property, except construction, estimated to be greater than \$50,000 in value that will be formally solicited. Examples of services covered by Alexandria's legislation include custodial, security, landscape maintenance, parking lot management, etc.</p> <p>Alexandria's living wage is a combination of two rates available from federal government indices. The first is the average poverty threshold for a family of four, as published by the U.S. Department of Health and Human Services in the Federal Register, divided by 2,080. The second is the average cost incurred by an employer with 500 or more workers for the provision of health insurance, as reported by the U.S. Bureau of Labor Statistics. These figures are totaled to provide the hourly rate that must be paid to employees of service contractors performing work on city-owned or city-occupied premises. If an employer provides health benefits to its employees, these benefits will be in addition to the specified hourly rate.</p> <p>The current living wage rate for the City of Alexandria is \$12.75 per hour.</p>
Policy	The Council establishes procurement policies for the City of Takoma Park.
Fiscal Impact	None—Discussion Only
Attachments	<p>Letter dated March 12, 2007 from Seth Grimes to Mayor Kathryn Porter concerning enactment of a Living Wage Law</p> <p>"Elements of a Living Wage Ordinance" from the Living Wage Resource Center website</p> <p>Montgomery County Code Section 11B-33A</p> <p>Maryland House Bill 430</p> <p>Fiscal and Policy Note for House Bill 430</p> <p>City of Alexandria Living Wage Ordinance Summary</p> <p>City of Charlottesville Code Section 22-9</p>

Recommendation	Staff recommends that the Council review the information compiled by staff and provide direction as to whether a living wage policy should be adopted by the City. Should the Council desire to adopt such a policy, it must determine the scope of coverage, which workers should be covered by the policy, the desired wage level, etc.
Special Consideration	

The Honorable Kathryn Porter
Mayor, City of Takoma Park
7500 Maple Avenue
Takoma Park, MD 20912

March 12, 2007

Dear Mayor Porter,

A living wage is a matter of right for all workers. We respectfully request that you schedule a council work session to discuss and craft a Takoma Park Living Wage Ordinance modeled on Montgomery County's 2002 living-wage act and on State of Maryland legislation, HB430. Enactment would create a mandate that all larger city contracts with for-profit and non-profit entities pay workers a wage that would place a family of four above the poverty line.

Good intentions are not enough. We need a living wage built visibly and proudly into city law, a demonstration of good government that values economic justice.

Sincerely,

Sabrina Baron
Keith Berner
Lynne Bradley
Franca Brilliant
Mary Carter-Williams
Karen Czapanskiy
Jose Dominguez
Marc Elrich
Gayle Fisher-Stewart
Tom Gagliardo
Norm Gleichman
Pastor Mark Greiner

Seth Grimes
Stacey Gurian-Sherman
Tom Hucker
Jane Hurst
Sat Jiwan Ikle-Khalsa
Jason Judd
Marty Ittner
Robert Lanza
George Leventhal
Heather Mizeur
Hank Prensky
Marie Ritzo

Jamie Raskin
Mar-E Robnett
Mary Rooker
Larry Rubin
Linda Schade
Fran Tall
Cindy Terrell
Mike Tidwell
Gustavo Torres
Catherine Tunis
Lois Wessel
Kevin Zeese

Cc: City Council Members Joy Austin-Lane, Doug Barry, Colleen Clay, Terry
Seamens, Reuben Snipper, Bruce Williams
City Manager Barbara Matthews
City Clerk Jessie Carpenter

Contact:

Seth Grimes
7300 Willow Avenue
Takoma Park, MD 20912

LivingWageResourceCenter



We encourage you to join in the fight.

Elements of a Living Wage Ordinance

(Outline of Questions to Grapple With)

I. "The Basics"

A. Wage level

1. Choosing base wage
2. Indexing (CPI or state median wage increase)

B. Health benefits

1. Calculate a two-tiered living wage (for jobs with and without benefits) and be able to defend it (e.g. base it on standard coverage from state's biggest insurer)
2. We suggest: officially define "health benefits" as simply equivalent to the gap between your required wage for those who pay benefit and those who don't
3. Other options (i.e. more detailed description of actual health plan) = ERISA pre-emption danger
4. Indexing (can use specific CPI health care cost index)

C. Scope of coverage

1. Direct city and/or county employees?
2. City/county contractors and/or subcontractors?
3. Recipients of city/county economic development assistance/subsidies? (how to define this?)
4. Contractors of economic development assistance . recipients?
5. Tenants or leaseholders of economic development assistance recipients?
6. Tenants on city property? (or city as tenant?)
7. Public (or quasi-public) authorities, corporations or agencies (ports, airports, economic development arms, school districts, transit agencies, public housing authorities)

D. Covered workers

1. Part time/full time/temporary/independent contractor -- be explicit on this
2. All workers employed by covered employer or restricted just to those on contract? (suggest latter)
3. Covered for hours worked on project only? (suggest yes)

Summary:

Introduction
The National
Movement

Our Campaign:

Current
Campaigns
Short Wins List
Living Wage
Wins
Stats at a
Glance

Organizing Info:

Resource
Guide
Elements of an
Ordinance
Setting a Living
Wage Level
Living Wage
Impact
Other Living
Wage
Research

In the News:

Press Clips
Press Releases

Links &

Contacts:

Contact Us
Living Wage
Links
ACORN.org

NOW AVAILABLE:

The 2003 updated version of the comprehensive 225-page guide for organizing living wage campaigns: *Living Wage Campaigns: An Activist's Guide to Building the Movement for Economic Justice* (by David Reynolds of Wayne State University Labor Studies Center with the ACORN Living Wage Resource Center). This nitty gritty guide includes profiles of successful campaigns, chapters on how to build a coalition, conduct research, respond to the opposition, draft an ordinance, plan a larger electoral strategy, a review of the available research on the impact of living wage laws, an appendix of helpful living wage resources and much more.

To order the guide, send a check or money order for \$15 (payable to ACORN) to Denise Johnson at ACORN: 739 8th St. SE; Washington, DC 20003. Substantial portions of this guide are available online in PDF format at www.laborstudies.wayne.edu.

Living Wage Resource Center

88 3rd Avenue
Brooklyn, NY 11217
718-246-7900 x230

E. Thresholds for coverage

1. By dollar value of contract or subsidy?
2. By number of employees? (flag unscrupulous practice possibility here)
3. Are there different thresholds for different types of assistance? For for-profits and non-profits?
4. Make clear that separate contracts from same company in same year be aggregated
5. For contracts for any service to city? = if we can
6. For contracts for the same service to the city? = definitely

F. Monitoring/Disclosure, Enforcement

1. Which city agency is enforcement agency?
2. What is the process for determining which firms are covered?
3. What company reporting will be required? Payroll submission?
4. Other monitoring obligations of city? Site visits? Mailed survey to workers?
5. How will workers be notified of rights? upon hire? posting requirement?
6. How will worker complaints be handled? immediate city investigation? confidentiality insured?
7. How will violations be handled? written notice? appeals process?
8. Annual reporting on LW compliance to city council? public hearings?
9. Community advisory board mandated in ordinance in order to give activists continued voice in implementation and enforcement

G. Sanctions

1. Who metes out sanction?
 - a) Which city/county agency responsible
 - b) Private right of action to permit workers, unions or community organizations to enforce = draft broadly
2. What kind of sanctions?
 - a) Termination of contract/subsidy
 - b) Clawback (pay back contract/subsidy monies)
 - c) Fines paid to city/county
 - d) Back-pay to workers
 - e) Punitive damages to workers and/or city/county
 - f) Barred from future contracts/subsidies, etc. (for how long?)
 - g) Reported to appropriate state or federal agency
3. City must/can pursue any and/or all?

H. Duration of coverage

1. On contracts or leases? (suggest for the term of contract or lease)
2. For subsidies?
 - a) Indefinitely (best option)
 - b) Until subsidy ends (loan is paid off, tax abatement phased out, etc)
 - c) Until subsidy ends or X years, whichever is LONGER
 - d) 5 years (several ordinances have used this

random measure)

II. Possible "Add-ons"

A. Community hiring or at least community posting of new positions

B. Vacation days and/or sick leave = both socially important and is a benefit that is not eroded by resulting higher taxes or loss of means-tested benefits or EITC

C. Union-friendly language/organizing handles

D. Worker retention

E. Collective bargaining supercession

F. Labor peace

1. Ban on use of public money for anti-union activities
2. Right of equal access by unions to workplaces located on city/county-owned or controlled property
3. Requirement that city/county contractors minimize risk of disruptions associated with labor strife by agreeing to use card check as means of employee preference regarding unionization

G. Community oversight board

H. Up-front reporting and regular disclosure of wage and hiring info

1. Job creation requirements
2. Maximum cost per job (e.g. must create X jobs for every \$10,000)

I. Incentives for training workers

III. Possible exemptions

A. Construction or other work covered by prevailing wage laws

B. Contracts for goods, as opposed to service contracts = generally not covered

C. Hardship" waivers if at all, should have tough and measurable eligibility criteria)

D. Non-profits (CEO to lowest paid worker ratio cutoff, phase-ins, employee thresholds, pass-through requirements, budget increase contingencies)

E. Loans (market rate vs. below market rate)

F. Summer youth jobs programs

G. Welfare-to-work trainees or "workfare" workers

H. New businesses

I. New employees

Montgomery County:

The following Section, ' 11B-33A, derived from 2002 L.M.C., ch. 17, is not effective until July 1, 2003. However, inasmuch as it applies to proposals invited after January 1, 2003, it is being codified in advance of the effective date.

Sec. 11B-33A. Wage requirements.

- (a) *Scope.* Any contract for procurement of services by a County department or office must require the contractor and any subcontractor to comply with the wage requirements of this Section. As used in this Section, "covered employer" refers to any contractor or subcontractor that is subject to this Section.
- (b) *Exceptions to coverage.* This Section does not apply to:
 - (1) a contractor who:
 - (A) employs fewer than 10 employees when the contractor submits a bid or proposal, and
 - (B) does not employ 10 or more employees at any time the contract is in effect as a result of performing the contract;
 - (2) a contractor who, at the time a contract is signed:
 - (A) has received less than \$50,000 from the County in the most recent 12-month period; and
 - (B) will be entitled to receive less than \$50,000 from the County under that contract in the next 12-month period;
 - (3) a contract with a public entity;
 - (4) a contract with a nonprofit organization that has qualified for an exemption from federal income taxes under Section 501(c)(3) of the Internal Revenue Code;
 - (5) a non-competitive contract awarded under Section 11B-14 if the Chief Administrative Officer finds that the performance of the contract would be significantly impaired if the wage requirements of this Section applied;
 - (6) a contract for electricity, telephone, cable television, water, sewer, or similar service delivered by a regulated public utility;
 - (7) a contract for services needed immediately to prevent or respond to an imminent threat to public health or safety;
 - (8) an employer to the extent that the employer is expressly precluded from complying with this Section by the terms of any federal or state law, contract, or grant;
 - (9) a bridge contract entered into under Section 11B-42; or
 - (10) a contract entered into under a cooperative procurement under Section 11B-40.

The Executive by regulation may increase the amount in subsection (b)(2) to reflect increases in the cost of living.

(c) *Solicitation requirements.*

- (1) Each bid or proposal to provide services to the County must specify how the contractor and each subcontractor will comply with these wage requirements, and must include sufficient funds to meet these requirements.
- (2) Each bid or proposal to provide services to the County which is submitted by an organization that is exempt from coverage under subsection (b)(4) must specify the wage the organization intends to pay to those employees who will perform direct, measurable work under the contract, and any health insurance the organization intends to provide to those employees. In evaluating the cost of a bid or proposal the County must disregard any additional cost attributable to payment of the wage requirements of this Section by any organization that is exempt from coverage under subsection (b)(4) when compared to a bid or proposal submitted by another organization that is also exempt from coverage under subsection (b)(4).
- (3) A contractor must not split or subdivide a contract, pay an employee through a third party, or treat an employee as a subcontractor or independent contractor, to avoid the imposition of any requirement under this Section.

(d) *Health insurance.* If a contractor or subcontractor commits in its bid or proposal to provide health insurance to any employee who provides services to the County, the contractor or subcontractor may:

- (1) certify in its bid or proposal the per-employee hourly cost of the employer=s share of the premium for that insurance, and
- (2) reduce the wage paid under subsection (c) to any employee covered by the insurance by all or part of the per-employee hourly cost of the employer=s share of the premium.

(e) *Wage requirement.*

- (1) Except as permitted under subsection (d)(2), each covered employer must pay each employee who is not exempt under subsection (f) at least \$10.50 per hour during the time the employee actually provides services to the County.
- (2) The Chief Administrative Officer must adjust the wage rate required under this subsection, effective July 1 of each year, by the annual average increase, if any, in the Consumer Price Index for all urban consumers for the Washington-Baltimore metropolitan area, or any successor index, for the previous calendar year. The Chief Administrative Officer must calculate the adjustment to the nearest multiple of 5 cents, and must publish the amount of this adjustment not later than March 1 of each year. Each adjustment under this paragraph applies to any contract covered by this Section which:
 - (A) is in effect when the adjustment takes effect, or
 - (B) takes effect during the next 12 months.

(f) *Exceptions to wage requirement.* The wage requirements of this Section do not apply to any employee:

- (1) who performs no measurable work related to any contract with the County;
- (2) who participates in a government-operated or -sponsored program that restricts the earnings of or wages paid to employees to a level below the wage required under this Section;
- (3) who participates for no longer than 120 days in any calendar year in a government-operated or -sponsored summer youth employment program; or
- (4) for whom a lower wage rate is expressly set in a bona fide collective bargaining agreement.

(g) *Conflicting requirements.* If any federal, state, or County law or regulation requires payment of a higher wage, that law or regulation controls. If any applicable collective bargaining agreement requires payment of a higher wage, that agreement controls.

(h) *Enforcement.*

- (1) The Chief Administrative Officer must require each covered employer to:
 - (A) certify that the employer and each subcontractor is aware of and will comply with the applicable wage requirements of this Section;
 - (B) keep and submit any records necessary to show compliance; and
 - (C) conspicuously post notices informing employees of the requirements of this

Section, and send a copy of each such notice to the Chief Administrative Officer=s designee.

- (2) The Chief Administrative Officer must enforce this Section, perform random audits and any other audit necessary to do so, and investigate any complaint of a violation.
- (3) An employer must not discharge or otherwise retaliate against an employee for asserting any right under this Section or filing a complaint of violation. Any retaliation is subject to all sanctions for noncompliance with this Section.
- (4) The sanctions of Section 11B-33(b) which apply to noncompliance with nondiscrimination requirements apply with equal force and scope to noncompliance with the wage requirements of this Section.
- (5) Each contract may specify that liquidated damages for any noncompliance with this Section includes the amount of any unpaid wages, with interest, and that the contractor is jointly and severally liable for any noncompliance by a subcontractor. In addition, each contract must specify that an aggrieved employee, as a third-party beneficiary, may by civil action enforce the payment of wages due under this Section and recover any unpaid wages with interest, a reasonable attorney=s fee, and damages for any retaliation for asserting any right under this Section.

(i) *Report.*

The Chief Administrative Officer must report annually to the Council and Executive on the operation of and compliance with this Section. In addition, the report filed under Section 11B-61(a) each year must compute the number of contracts and subcontracts with minority-owned businesses that are subject to the requirements of this Section, and how that number has changed since the year before those requirements took effect. (2002 L.M.C., ch. 17, ' 1.)

Editor's noteC2002 L.M.C., ch. 17, ' 2, states: Section 11B-33A, inserted by Section 1 of this Act, applies, effective July 1, 2003, to any contract for which the County government released a solicitation on or after January 1, 2003, and to any renewal or extension of a previously-effective contract which takes effect on or after July 1, 2003, and incorporates any material alteration to a provision of that contract. The Chief Administrative Officer must offer to renegotiate any multi-year contract which took effect before July 1, 2003, if the contractor agrees to apply the wage requirements of Section 11B-33A to employees who provide services under that contract. The first annual wage adjustment required by Section 11B-33A(e)(2) must take effect on July 1, 2004.

CHAPTER 284

(House Bill 430)

AN ACT concerning

State Procurement Contracts – Living Wage

FOR the purpose of requiring certain contractors and subcontractors to pay certain employees ~~a~~ certain minimum wage ~~rate~~ rates under certain State procurement contracts; providing certain exemptions and reductions in ~~a~~ certain wage ~~rate~~ rates; requiring the Commissioner of Labor and Industry to alter ~~a~~ certain wage ~~rate~~ rates based on a certain Consumer Price Index and to administer and enforce requirements with regard to certain employers; authorizing the Commissioner to authorize, by regulation, certain reductions in certain wage rates; requiring the Commissioner to publish ~~a~~ certain wage ~~rate~~ rates under certain circumstances; requiring the Commissioner to make certain assessments every five years at certain intervals; requiring ~~certain units of State government~~ the Commissioner to adopt regulations and authorizing certain units to grant certain waivers; requiring certain individuals in certain units of State government to make certain determinations; ~~granting certain employees rights of free speech and association~~ requiring the Commissioner to conduct a certain study; requiring certain employers to post certain information; requiring the Commissioner to develop a certain notice and to make the notice available in certain manners; authorizing an employee to sue for certain wages under certain circumstances; providing certain remedies and certain procedural requirements; ~~prohibiting an employer from retaliating against an employee based on a certain action~~; establishing certain penalties; defining certain terms; requiring the Department of Legislative Services to study certain matters and report to the General Assembly on or before a certain date; requiring certain governmental units to cooperate with the Department and provide certain information in a certain manner; providing for the application of this Act; and generally relating to the living wage.

BY repealing and reenacting, without amendments,
Article – State Finance and Procurement
Section 11-101(x)
Annotated Code of Maryland
(2006 Replacement Volume and 2006 Supplement)

BY adding to

Article – State Finance and Procurement

Section ~~12-101(e)~~ and 18-101 through ~~18-110~~ 18-109, inclusive, to be under the new title “Title 18. Living Wage”

Annotated Code of Maryland

(2006 Replacement Volume and 2006 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – State Finance and Procurement

11-101.

(x) (1) “Unit” means an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement contract.

(2) “Unit” does not include:

(i) a bistate, multistate, bicounty, or multicounty governmental agency; or

(ii) a special tax district, sanitary district, drainage district, soil conservation district, water supply district, or other political subdivision of the State.

~~12-101.~~

~~(c) AFTER CONSULTATION WITH THE COMMISSIONER OF LABOR AND INDUSTRY, THE BOARD SHALL ADOPT REGULATIONS GOVERNING THE APPLICATION OF TITLE 18 OF THIS ARTICLE TO CONTRACTORS AND SUBCONTRACTORS SUBJECT TO THE PROVISIONS OF TITLE 18 OF THIS ARTICLE.~~

TITLE 18. LIVING WAGE.

18-101.

(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "COMMISSIONER" MEANS THE COMMISSIONER OF LABOR AND INDUSTRY.

(C) (1) "EMPLOYER" MEANS A CONTRACTOR OR SUBCONTRACTOR THAT HAS A STATE CONTRACT FOR SERVICES VALUED AT \$100,000 OR MORE.

(2) "EMPLOYER" DOES NOT INCLUDE A CONTRACTOR OR SUBCONTRACTOR THAT:

(I) EMPLOYS 10 OR FEWER EMPLOYEES; AND

(II) HAS A STATE CONTRACT FOR SERVICES VALUED AT LESS THAN \$500,000.

(D) "LIVING WAGE" MEANS AN HOURLY WAGE SET AS PROVIDED UNDER § 18-103 OF THIS TITLE.

(E) "TIER 1 AREA" INCLUDES MONTGOMERY COUNTY, PRINCE GEORGE'S COUNTY, HOWARD COUNTY, ANNE ARUNDEL COUNTY, BALTIMORE COUNTY, AND BALTIMORE CITY.

(F) "TIER 2 AREA" INCLUDES ANY COUNTY IN THE STATE NOT INCLUDED IN THE TIER 1 AREA.

18-102.

(A) (1) THIS TITLE APPLIES TO AN EMPLOYEE OF AN EMPLOYER FOR THE DURATION OF A CONTRACT SUBJECT TO THIS TITLE IF AT LEAST ONE-HALF OF THE EMPLOYEE'S TIME DURING ANY WORK WEEK RELATES TO A STATE CONTRACT FOR SERVICES OR A SUBCONTRACT FOR SERVICES UNDER A STATE CONTRACT.

(2) THIS TITLE DOES NOT APPLY TO AN EMPLOYEE OF AN EMPLOYER IF THE EMPLOYEE:

(I) IS 17 YEARS OF AGE OR YOUNGER FOR THE DURATION OF A CONTRACT SUBJECT TO THIS TITLE; OR

(II) WORKS LESS THAN 13 CONSECUTIVE WEEKS FOR THE DURATION OF A CONTRACT SUBJECT TO THIS TITLE AND DURING THAT PERIOD WORKS FULL TIME.

(B) THIS TITLE DOES NOT APPLY TO A CONTRACT:

(1) FOR SERVICES NEEDED IMMEDIATELY TO PREVENT OR RESPOND TO AN IMMINENT THREAT TO PUBLIC HEALTH OR SAFETY;

(2) WITH A PUBLIC SERVICE COMPANY;

(3) WITH A NONPROFIT ORGANIZATION;

(4) BETWEEN UNITS; OR

(5) BETWEEN A UNIT AND A COUNTY OR BALTIMORE CITY.

(C) IF THE UNIT RESPONSIBLE FOR A STATE CONTRACT DETERMINES THAT APPLICATION OF THIS TITLE WOULD CONFLICT WITH ANY APPLICABLE FEDERAL PROGRAM REQUIREMENT, THIS TITLE DOES NOT APPLY TO THE CONTRACT OR PROGRAM.

(D) THE HEAD OF THE UNIT RESPONSIBLE FOR A STATE CONTRACT SUBJECT TO THIS TITLE SHALL DETERMINE IF CONTRACT SERVICES VALUED AT 50% OR MORE OF THE TOTAL VALUE OF THE CONTRACT WILL BE PERFORMED IN THE TIER 1 AREA OR THE TIER 2 AREA AND SHALL PROVIDE THAT DETERMINATION ON THE INVITATION FOR A BID.

18-103.

(A) EXCEPT AS PROVIDED IN SUBSECTION ~~(D)~~ (C) OF THIS SECTION, AN EMPLOYER SUBJECT TO THIS TITLE SHALL PAY EACH EMPLOYEE COVERED UNDER THIS TITLE ~~AT LEAST \$11.95 PER HOUR;~~

(1) AT LEAST \$11.30 PER HOUR, IF STATE CONTRACT SERVICES VALUED AT 50% OR MORE OF THE TOTAL VALUE OF THE CONTRACT ARE PERFORMED IN THE TIER 1 AREA; OR

(2) AT LEAST \$8.50 PER HOUR, IF STATE CONTRACT SERVICES VALUED AT 50% OR MORE OF THE TOTAL VALUE OF THE CONTRACT ARE PERFORMED IN THE TIER 2 AREA.

(B) (1) NOT LATER THAN 90 DAYS AFTER THE START OF EACH FISCAL YEAR, THE COMMISSIONER SHALL ADJUST THE WAGE ~~RATE~~ RATES REQUIRED UNDER SUBSECTION (A) OF THIS SECTION BY THE ANNUAL AVERAGE INCREASE OR DECREASE, IF ANY, IN THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS FOR THE WASHINGTON-BALTIMORE METROPOLITAN AREA, OR ANY SUCCESSOR INDEX, FOR THE PREVIOUS CALENDAR YEAR.

(2) IF THE COMMISSIONER ADJUSTS THE WAGE ~~RATE~~ RATES IN ACCORDANCE WITH PARAGRAPH (1) OF THIS SUBSECTION, THE COMMISSIONER SHALL PUBLISH THE NEW WAGE ~~RATE~~ RATES ON THE DIVISION OF LABOR AND INDUSTRY'S WEBSITE.

(3) ON REQUEST BY ANY PERSON, THE COMMISSIONER SHALL GIVE THE PERSON A PRINTED COPY OF THE NEW WAGE ~~RATE~~ RATES.

~~(C) IF A CONTRACT IS SUBJECT TO PREVAILING WAGE REQUIREMENTS UNDER TITLE 17, SUBTITLE 2 OF THIS ARTICLE, AN EMPLOYER SHALL PAY AN EMPLOYEE THE HIGHER WAGE RATE OF THE WAGE RATES REQUIRED UNDER THIS TITLE OR TITLE 17, SUBTITLE 2 OF THIS ARTICLE.~~

~~(D)~~ (C) IF AN EMPLOYER COMMITS IN ITS BID OR PROPOSAL TO PROVIDE HEALTH INSURANCE TO AN EMPLOYEE, EITHER DIRECTLY OR THROUGH AN EMPLOYEE REPRESENTATIVE, THE EMPLOYER MAY:

(1) CERTIFY IN ITS BID OR PROPOSAL THE HOURLY COST OF THE EMPLOYER'S SHARE OF THE PREMIUM FOR THAT INSURANCE FOR EACH EMPLOYEE; AND

(2) REDUCE THE WAGE PAID UNDER SUBSECTION (A) OF THIS SECTION TO ANY EMPLOYEE COVERED BY THE INSURANCE BY ALL OR PART OF THE HOURLY COST OF THE EMPLOYER'S SHARE OF THE PREMIUM FOR EACH EMPLOYEE.

(D) THE COMMISSIONER MAY AUTHORIZE, BY REGULATION, AN EMPLOYER TO REDUCE THE WAGE RATES PAID UNDER SUBSECTION (A) OF THIS SECTION BY NO MORE THAN 50 CENTS OF THE HOURLY COST OF THE

EMPLOYER'S CONTRIBUTION TO AN EMPLOYEE'S DEFERRED COMPENSATION PLAN.

18-104.

(A) THE COMMISSIONER SHALL ADOPT REGULATIONS GOVERNING EMPLOYERS SUBJECT TO THIS TITLE.

(B) THE COMMISSIONER MAY REQUIRE THAT AN EMPLOYER KEEP RECORDS AND SUBMIT REPORTS TO THE COMMISSIONER THAT THE COMMISSIONER DETERMINES NECESSARY FOR THE EFFECTIVE ADMINISTRATION AND ENFORCEMENT OF THIS TITLE.

(C) THE COMMISSIONER EVERY 5 3 YEARS SHALL ASSESS THE APPROPRIATENESS OF:

(1) THE MEASURES USED TO ADJUST THE WAGE RATES UNDER § 18-103(B) OF THIS SUBTITLE TO ENSURE THAT THE MEASURES ACCURATELY REFLECT THE WAGE RATES OF EMPLOYEES IN THE TIER 1 AREA AND TIER 2 AREA OF THE STATE; AND

(2) THE PLACEMENT OF COUNTIES IN THE TIER 1 AREA AND TIER 2 AREA.

18-105.

~~(A) AN EMPLOYEE COVERED UNDER THIS TITLE HAS A RIGHT OF FREE SPEECH AND ASSOCIATION.~~

~~(B)~~ AN AGREEMENT BY AN EMPLOYEE TO COMMUTE, RELEASE, OR WAIVE THE EMPLOYEE'S RIGHTS UNDER THIS TITLE IS VOID.

18-106.

(A) DURING ANY PERIOD IN WHICH AN EMPLOYEE OF THE EMPLOYER IS ENTITLED TO A WAGE RATE UNDER THIS TITLE, EACH EMPLOYER SUBJECT TO THIS TITLE SHALL POST IN A PROMINENT AND EASILY ACCESSIBLE PLACE AT THE WORK SITE OF AN EMPLOYEE DESCRIBED IN § 18-102(A) OF THIS TITLE A NOTICE OF:

- (1) THE LIVING WAGE RATE;
- (2) EMPLOYEE RIGHTS UNDER THIS TITLE; AND
- (3) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE COMMISSIONER.

(B) ~~THE NOTICE UNDER THIS SECTION SHALL BE POSTED IN ENGLISH, SPANISH, AND ANY OTHER LANGUAGE COMMONLY USED BY EMPLOYEES AT THE WORK SITE OF AN EMPLOYEE DESCRIBED IN § 18-102(A) OF THIS TITLE:~~

(1) DEVELOPED BY THE COMMISSIONER IN ENGLISH, SPANISH, AND ANY OTHER LANGUAGE COMMONLY USED BY EMPLOYEES AT A WORK SITE; AND

(2) (I) ON REQUEST OF AN EMPLOYER, PROVIDED WITHOUT CHARGE TO THE EMPLOYER; OR

(II) MADE AVAILABLE FOR DOWNLOAD ON THE INTERNET WITHOUT CHARGE.

(C) SUBJECT TO § 10-1001 OF THE STATE GOVERNMENT ARTICLE, THE COMMISSIONER MAY IMPOSE ON A PERSON THAT VIOLATES THIS SECTION A CIVIL PENALTY NOT EXCEEDING \$50 PER VIOLATION.

18-107.

(A) WITHIN 30 DAYS AFTER A COMPLAINT IS FILED, THE COMMISSIONER SHALL INVESTIGATE THE COMPLAINT IN ACCORDANCE WITH THIS TITLE.

(B) A WRITTEN OR ORAL COMPLAINT OR STATEMENT MADE BY AN EMPLOYEE UNDER THIS TITLE IS CONFIDENTIAL AND MAY NOT BE DISCLOSED TO THE EMPLOYER WITHOUT THE CONSENT OF THE EMPLOYEE.

(C) AN EMPLOYER SUBJECT TO THIS TITLE SHALL ALLOW THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE ACCESS TO A WORK SITE AND PAYROLL RECORDS, AND ALLOW AN OPPORTUNITY TO INTERVIEW EMPLOYEES FOR PURPOSES OF ENFORCING THIS TITLE.

(D) (1) WITHIN 30 DAYS AFTER COMPLETING AN INVESTIGATION, THE COMMISSIONER SHALL ISSUE AN ORDER FOR A HEARING.

(2) WITHIN 30 DAYS BEFORE THE HEARING, THE COMMISSIONER SHALL SERVE, PERSONALLY OR BY MAIL, WRITTEN NOTICE OF THE HEARING ON ALL INTERESTED PARTIES.

(3) THE NOTICE SHALL INCLUDE:

(I) A STATEMENT OF FACTS DISCLOSED IN THE INVESTIGATION; AND

(II) THE TIME AND PLACE OF THE HEARING.

(4) IN CONDUCTING A HEARING, THE COMMISSIONER MAY:

(I) SUBPOENA WITNESSES;

(II) ADMINISTER OATHS; AND

(III) COMPEL THE PRODUCTION OF RECORDS, BOOKS, PAPERS, AND OTHER EVIDENCE.

(E) (1) WITHIN 30 DAYS AFTER THE CONCLUSION OF THE HEARING, THE COMMISSIONER SHALL:

(I) ISSUE A DETERMINATION; AND

(II) SERVE, PERSONALLY OR BY MAIL, EACH INTERESTED PARTY WITH A COPY OF THE DETERMINATION.

(2) IF THE COMMISSIONER FINDS A VIOLATION OF THIS TITLE, THE COMMISSIONER SHALL DETERMINE THE AMOUNT OF RESTITUTION AND LIQUIDATED DAMAGES TO BE ASSESSED UNDER § 18-108 OF THIS TITLE.

(3) ON RECEIPT OF THE DETERMINATION, THE EMPLOYER SHALL PAY THE AFFECTED EMPLOYEES THE AMOUNT DUE IN ACCORDANCE WITH THE COMMISSIONER'S DETERMINATION.

18-108.

IF THE COMMISSIONER DETERMINES THAT THE EMPLOYER VIOLATED A PROVISION OF THIS TITLE OR REGULATIONS OF THE COMMISSIONER, THE EMPLOYER SHALL:

(1) PAY RESTITUTION TO EACH AFFECTED EMPLOYEE; AND

(2) PAY TO THE STATE LIQUIDATED DAMAGES OF \$20 PER DAY FOR EACH EMPLOYEE WHO WAS PAID LESS THAN THE HOURLY RATE REQUIRED UNDER THIS TITLE.

18-109.

(A) (1) IF AN EMPLOYEE WAS PAID LESS THAN THE WAGE RATE REQUIRED UNDER THIS TITLE THE EMPLOYEE IS ENTITLED TO SUE TO RECOVER THE AMOUNT OF THE DIFFERENCE BETWEEN THE WAGE RATE REQUIRED UNDER THIS TITLE AND THE AMOUNT RECEIVED BY THE EMPLOYEE.

(2) A DETERMINATION BY THE COMMISSIONER THAT AN EMPLOYER IS REQUIRED TO MAKE RESTITUTION DOES NOT PRECLUDE AN EMPLOYEE FROM FILING AN ACTION UNDER THIS SECTION.

(B) (1) AN ACTION UNDER THIS SECTION IS CONSIDERED TO BE A SUIT FOR WAGES.

(2) A JUDGMENT IN AN ACTION UNDER THIS SECTION SHALL HAVE THE SAME FORCE AND EFFECT AS ANY OTHER JUDGMENT FOR WAGES.

(C) THE FAILURE OF AN EMPLOYEE TO PROTEST ORALLY OR IN WRITING THE PAYMENT OF A WAGE THAT IS LESS THAN THE WAGE RATE REQUIRED UNDER THIS TITLE IS NOT A BAR TO RECOVERY IN AN ACTION UNDER THIS SECTION.

~~18-110.~~

~~(A) AN EMPLOYER MAY NOT RETALIATE AGAINST AN EMPLOYEE BECAUSE THE EMPLOYEE EXERCISES THE EMPLOYEE'S RIGHTS UNDER THIS TITLE.~~

~~(b) AN EMPLOYER WHO VIOLATES SUBSECTION (A) OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$500 OR IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH.~~

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) The Department of Legislative Services shall conduct a study of the fiscal and economic impacts of this Act on the public and private sectors.

(b) (1) In conducting this study, the Department shall consult with and obtain all necessary and appropriate information from the Department of Labor, Licensing, and Regulation, the Office of the Attorney General, local governments, and other appropriate units and persons.

(2) Each unit of the Executive Branch of State government and each unit of local government shall fully cooperate with the Department of Legislative Services and its employees and agents in the activities necessary or helpful in fulfilling the requirements of this section.

(3) Notwithstanding Title 10, Subtitle 6 of the State Government Article or any other law, each governmental unit that is requested to provide information to the Department of Legislative Services in furtherance of this section shall provide the information promptly and without the necessity of further authorization.

(c) On or before January 1, 2009, the Department of Legislative Services shall report the findings of the study to the General Assembly, subject to § 2-1246 of the State Government Article.

SECTION 3. AND BE IT FURTHER ENACTED, That:

(a) The Commissioner of Labor and Industry shall study the impact on the standard of living of employees that results from allowing an employer to reduce the living wage rates paid under Section 1 of this Act by all or part of the hourly cost of the employer's contribution to a deferred retirement plan of the employer's employees.

(b) The study required under subsection (a) of this section shall include a review of living wage requirements in other jurisdictions in Maryland and nationally.

(c) The Commissioner of Labor and Industry shall report the findings and recommendations resulting from the study required under subsection (a) of this section.

in accordance with § 2-1246 of the State Government Article, to the Governor and the General Assembly by December 1, 2007.

SECTION ~~3~~ 4. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any contract awarded before the effective date of this Act.

SECTION ~~4~~ 5. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2007.

Approved by the Governor, May 8, 2007.

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

House Bill 430 (Delegate Taylor, *et al.*)

Economic Matters

Finance

State Procurement Contracts - Living Wage

This bill requires State contractors to pay their employees a "living wage." For fiscal 2008, the living wage is set at \$11.30 in Montgomery, Prince George's, Howard, Anne Arundel, and Baltimore counties and Baltimore City. It is set at \$8.50 for all other areas of the State. The living wage rates will be adjusted for inflation annually by the Commissioner of Labor and Industry. The bill exempts specified State contractors and employees from the living wage requirement, and allows employers to reduce the wages they pay if they provide health insurance to affected employees or make employer contributions to employees' tax-deferred retirement accounts.

The bill applies prospectively only to contracts awarded after the bill's October 1, 2007 effective date.

Fiscal Summary

State Effect: Potential moderate to minimal expenditure increase in the short-term, all funds, from contract cost increases passed on to the State; long-term effects are less certain but could be significant. General fund revenues would increase from liquidated damages and penalties imposed by the Division of Labor and Industry. The following table shows only the general fund administrative costs and penalty revenues associated with the bill.

(in dollars)	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
GF Revenue	\$0	\$90,000	\$90,000	\$90,000	\$90,000
GF Expenditure	114,800	138,900	146,500	154,500	163,000
Net Effect	(\$114,800)	(\$48,900)	(\$56,500)	(\$64,500)	(\$73,000)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The higher living wage rate (\$11.30) applies to contracts in which at least 50% of the contract services will be performed in locations subject to the higher rate, as determined by the State agency responsible for the contract. The lower living wage rate (\$8.50) applies to all other contracts. State contractors or subcontractors with a State contract for services valued at greater than \$100,000 must pay the living wage to employees who spend at least half their time during any work week working on the State contract. However, the living wage requirement does not apply to employees who are under the age of 18 or who work full-time for less than 13 consecutive weeks for the duration of the contract. Employers who provide health insurance to workers may reduce wages by all or part of the hourly cost of the employer's share of the premium for each employee. The bill authorizes the Commissioner of Labor and Industry to allow an employer who contributes to its employees' tax-deferred retirement savings accounts to reduce the living wage rate by the hourly cost of the employer's contribution, up to 50 cents per hour.

State contractors are not required to pay a living wage if doing so would conflict with a federal requirement or if they are:

- providing emergency services to prevent or respond to an imminent threat to public health or safety;
- a public service company;
- a nonprofit organization;
- another State agency;
- a county government (including Baltimore City); or
- a firm with 10 or fewer employees that has a State contract valued at less than \$500,000.

The bill requires the commissioner to adopt regulations, investigate wage complaints, issue orders for hearings, issue determinations, serve each interested party, and determine the amount of restitution for violations. Every three years, the commissioner must assess the appropriateness of the inflation measure used to recalculate the living wage rate on an annual basis (the Consumer Price Index for all Urban Consumers in the Washington-Baltimore metropolitan area). The commissioner must also assess whether Maryland

counties are subject to the appropriate living wage rates, given labor costs in their jurisdictions. The bill allows an employee to sue for damages when an employer fails to pay the living wage, regardless of whether the State has required the employer to pay restitution.

Employers who violate the living wage requirements must pay the affected employees the amount determined by the commissioner and pay the State \$20 per day per employee in liquidated damages. The bill also requires employers to post a notice of the living wage rate, the employees' rights under the bill, and contact information for the commissioner in English, Spanish, and any other language commonly used at the work site; the commissioner is responsible for providing these notices to employers.

The bill requires two studies. First, the commissioner must study the impact of allowing employers' contributions to tax-deferred retirement accounts to reduce the living wages they pay on the standard of living of employees affected by that reduction. The study must include a review of living wage requirements in other Maryland jurisdictions and nationally. The commissioner must report the results of the study to the Governor and the General Assembly by December 1, 2007. Second, the Department of Legislative Services (DLS) must conduct a study of the fiscal and economic impacts of this bill on the public and private sectors. DLS is required to consult with the Department of Labor, Licensing, and Regulation (DLLR); the Office of the Attorney General; local governments; and other appropriate units. The bill requires units of State government and local governments to cooperate with DLS. DLS must report its findings by January 1, 2009 to the General Assembly.

Current Law: There is no requirement for a living wage for State contractors. However, public works projects, including school construction, are required to pay prevailing wages if 50% or more of total construction costs are paid by the State, unless the project costs less than \$500,000. Several Maryland jurisdictions (Allegany County, Baltimore City) have local prevailing wage requirements for all public works projects.

Chapter 2 of 2006 raised Maryland's minimum wage to \$6.15 per hour, compared with the federal minimum wage of \$5.15 per hour.

Both chambers of the 2007 U.S. Congress have passed provisions that would increase the federal minimum wage to \$7.25 over two years, but other differences in the proposed legislation must still be resolved.

The following State agencies are exempted in whole or in part from most State procurement law, and thus would not be subject to the living wage law, including:

- University System of Maryland;
- Morgan State University;
- St. Mary's College of Maryland;
- Blind Industries and Services of Maryland;
- Maryland State Arts Council;
- Maryland Health and Higher Educational Facilities Authority;
- Department of Business and Economic Development;
- Maryland Food Center Authority;
- Maryland Public Broadcasting Commission;
- Maryland State Planning Council on Developmental Disabilities;
- Maryland Automobile Insurance Fund;
- Maryland Historical Trust;
- Rural Maryland Council;
- Maryland State Lottery Agency;
- Maryland Health Insurance Plan;
- Maryland Energy Administration;
- Maryland Developmental Disabilities Administration;
- Maryland Stadium Authority; and
- State Retirement and Pension System.

Any employee of a contractor who discloses that their employer has failed to abide by the living wage law, or who seeks legal redress against an employer who fails to abide by the law, is protected under State whistleblower protection provisions. Those provisions prevent an employer from taking any personnel action, or refusing to take a personnel action, in retaliation against an employee who discloses that the employer has:

- abused its authority or wasted public funds;
- posed a danger to public health or safety; or
- violated the law.

The whistleblower provisions also protect an employee who seeks legal action to stop the employer's illegal behavior or to remedy any retaliatory actions taken against the employee.

Background: In 1994, Baltimore City became the first locality in the country to enact a living wage requirement for city contractors. Since then, living wage laws have been adopted in at least 120 localities in the U.S, including other large cities such as Detroit, Boston, and Los Angeles. In 2005, Montgomery County and Prince George's County joined Baltimore City as the only jurisdictions in the State to enact a living wage. Washington, DC enacted a living wage bill in 2006, which set the initial living wage at \$11.75, subject to annual increases. The current living wage rate is \$9.62 in Baltimore City, \$11.60 in Montgomery County, and \$11.25 in Prince George's County. There are currently no statewide living wage laws, although legislation is pending in eight states.

Based on 2004 U.S. Census figures, per capita income in Maryland ranges from a high of \$56,662 in Montgomery County to a low of \$21,741 in Somerset County, with a statewide average of \$39,790.

In 2005, approximately 28,000 Marylanders earned the minimum wage. However, approximately 9.8% of Marylanders, or 548,000 residents, live below the federal poverty level. Under the new State minimum wage, full-time workers earn \$12,792 annually, just above the federal poverty level for a single person and well below the federal poverty level of \$20,650 for a family of four. Full-time workers earning a living wage of \$11.30 per hour would earn \$23,504 annually; those earning \$8.50 per hour would earn \$17,680 annually.

Short-term Costs

Numerous studies examining the early implementation of local living wage ordinances in different localities conclude that, on a nominal basis, contract costs increase by less than the rate of inflation. In 2001, several studies found that contract costs increased between 0.003 to 0.079% of the jurisdiction's total budget. In Baltimore City, a 1999 Johns Hopkins University study found that for the 26 living wage contracts that could be compared before and after the living wage law was implemented, contract costs increased by 1.2%. Montgomery County's procurement office reports that it has not experienced any significant increase to its contract costs in the two years since the enactment of the county's living wage law.

The research studies attribute the minimal increases in contract costs to several factors. A consistent finding has been increased retention among employees earning the living wage, which reduces recruitment and training costs for employers. Several studies have found evidence of increased worker productivity and employer absorption of some costs due to the pressure of competitive contract bidding. Another possible explanation for these findings is that they are incomplete. Almost all of the available research on the effects of living wages has examined cost effects within one to three years of the

legislation's enactment in a particular jurisdiction. Thus, they capture only a small portion of affected contracts because the living wage requirements apply only to new contracts awarded after the living wage takes effect. Also, anecdotal evidence from several studies suggests that some employers did not comply with the living wage requirement and that enforcement of the requirement was lax. This was true in the 1999 study of Baltimore City, but Montgomery County reports no complaints about employer noncompliance.

A significant shortcoming of these studies is that they cannot say what would have happened to contract costs in the absence of the living wage legislation. Given that contract costs increased only marginally, and often declined in real terms, it is conceivable that they would have declined by even greater margins if contractors did not have to pay higher living wages. In these instances, there could be an opportunity cost associated with living wages that has not been measured.

Long-term Costs

Long-term costs associated with living wage requirements could be larger or smaller than the initial costs highlighted in the current research. Among the reasons they could be higher are:

- more labor intensive contracts could be affected over time. Most living wage research shows that contract cost increases were larger for labor intensive services, such as janitorial services, than for other service contracts. In some cases, the cost increases were as high as 16%;
- wage spillover effects could push wages higher in nonaffected jobs. One study found that employees whose income was originally higher than the mandated living wage bargained for significant wage increases to maintain the traditional wage gap between them and low-wage co-workers; and
- enhanced awareness and enforcement of the living wage provisions could reduce noncompliance among employers.

However, the long-term effects could be muted by two factors:

- reduced public assistance payments under Temporary Assistance for Needy Families, Medicaid, food stamps, and other programs as families earning the living wage emerge from poverty status; and

- the bill's provision for annual adjustments to the living wage based on the CPI-U in the Washington/Baltimore region. **Exhibit 1** shows that for the past seven years for which data are available, the CPI-U for the region has grown substantially slower than average annual pay in Maryland. If that trend continues, the living wage may cause wages for affected employees to grow at a slower pace than they normally would.

Exhibit 1
Annual Growth Rates for CPI-U and Average Maryland Pay

	CPI-U (DC/Baltimore)	Average Annual Pay (Maryland)
2004	2.8%	4.7%
2003	2.8	3.3
2002	2.4	3.0
2001	2.6	5.1
2000	3.3	5.5
1999	2.1	3.5
1998	1.3	4.9

Source: U.S. Bureau of Labor Statistics

State Revenues: Based on similar liquidated damages provisions in the prevailing wage law, DLLR estimates that it would collect approximately \$90,000 per year, although fiscal 2008 collections would likely be minimal.

State income tax revenues could increase as incomes rise for affected employees, while at the same time tax receipts could drop as some individuals receive larger tax refunds under the State's earned income tax credit program. The Comptroller's Office reports that the net effect of these changes on State tax revenues is likely to be negligible.

State Expenditures: This bill could result in moderate to minimal increases in State expenditures, all funds, stemming from increased contract costs and administrative expenses.

Contract Cost Increases

Most analyses agree that service contracting is the contract type most likely to be affected by living wage requirements. The Department of General Services (DGS) is the procurement control agency for facilities maintenance contracts, while the Department of Budget and Management (DBM) is the control agency for all other service contracts. Neither DGS nor DBM can provide aggregate wage data for the service contracts they procure. However, the following contracts are among the largest service contracts that would likely be affected by the living wage mandate:

- community-based services for individuals with developmental disabilities, by the Developmental Disabilities Administration (\$602 million in fiscal 2007);
- maintenance contracts (e.g., garbage removal, landscaping, janitorial services; systems' maintenance) for all State facilities (\$28.4 million in fiscal 2006); and
- food service contracts for all Department of Public Safety and Correctional Services and Department of Health and Mental Hygiene institutions (\$15.2 million in fiscal 2007).

Community-based service contracts by the Developmental Disabilities Administration (DDA), by far the single largest item on the list, would seem not to be affected by the living wage provisions, for two reasons. First, approximately 90% of the DDA contractors are nonprofit organizations, which are exempt from the living wage requirement. Second, the average direct service employee under those contracts already earns almost \$12 an hour, more than the proposed living wage rates.

DDA notes, however, that its contractors already have trouble recruiting staff at the current \$12 wage rate because the work is difficult and often unpleasant. The contractors worry that if more jobs become available that pay a similar wage and are less stressful, they would have to raise their wages even higher to keep attracting new employees. In response, DDA would have to raise its standard reimbursement rates, which apply uniformly to all non- and for-profit service providers. In the short term, the number of jobs likely to be affected by the living wage will not be large enough to create the wage pressure that concerns DDA, but in the long term, as discussed earlier, there could be wage spillover effects.

Most research indicates that, in the short term, a living wage requirement increases total contract costs by 0 to 2% in nominal terms. DLS believes a reasonable assumption is that State contract costs could increase by no more than 1%. In the short term, State expenditures could increase by approximately \$436,000 annually for maintenance and food service contracts. The total impact will be realized incrementally as contracts are re-bid. The increase is assumed to be divided 60% general funds, 20% special funds, and

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20% federal funds. It is less, however, than the annual rate of inflation, and thus may be largely absorbed within automatic contract increases, as is often the case with local living wage laws.

In the long term, wage spillover effects could impact the costs of DDA and other services provided by nonprofit organizations. The fiscal impact of this cannot be reliably estimated. To the extent that the wage spillover effects are smaller than inflation growth, there would be no significant annual contract cost increases.

Administrative Costs

General fund expenditures by DLLR could increase by an estimated \$114,780 in fiscal 2008, which accounts for the bill's October 1, 2007 effective date. This estimate reflects the cost of hiring one administrator to oversee DLLR's enforcement effort, one wage and hour investigator to investigate complaints of living wage violations, and one clerical staff person. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Salaries and Fringe Benefits	\$97,951
Operating Expenses	<u>16,829</u>
Total FY 2008 State Expenditures	\$114,780

Future year expenditures reflect: (1) full salaries with 4.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses. Assuming that it would receive up to 1,000 living wage complaints each year, and that each investigator can complete 500 investigations each year, DLLR requested two wage and hour investigators. However, given that local jurisdictions report few complaints of noncompliance, and that DLLR received only 229 complaints of noncompliance with the prevailing wage requirements in fiscal 2006, DLS believes only one wage and hour investigator is necessary.

DLS advises that it will likely be able to conduct the mandated study with existing resources, depending on the number of other required reports mandated during the 2007 session. Staff resources could be diverted from other responsibilities.

Small Business Effect: Large firms are more able than small firms to absorb the cost of increased wages without passing on the full cost to the State because small businesses are less able to take advantage of economies of scale to reduce costs. Often, small firms do not have a large enough client base over which to spread the increased costs. Therefore,

the living wage could put them at a competitive disadvantage in bidding for State contracts.

Additional Information

Prior Introductions: SB 621 of 2004 passed the House and the Senate, but was vetoed by the Governor for policy reasons.

Cross File: None.

Information Source(s): Maryland Chamber of Commerce; Department of General Services; Board of Public Works; Comptroller's Office; University System of Maryland; Department of Labor, Licensing, and Regulation; Department of Budget and Management; Department of Public Safety and Correctional Services; Montgomery County; Progressive Maryland; *Industrial Relations*; Brennan Center for Justice; Economic Policy Institute; Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2007
mll/rhh Revised - House Third Reader - April 6, 2007
Revised - Enrolled Bill - May 11, 2007

Analysis by: Michael C. Rubenstein

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

DIVISION OF PURCHASING

ALEXANDRIA CITY COUNCIL ADOPTS LIVING WAGE ORDINANCE

En Español

At its June 17, 2000, public hearing, the Alexandria City Council adopted a Living Wage ordinance that requires contractors, excluding construction, providing services on City-owned or City-controlled property to pay a minimum wage to their employees. For details, see a complete [copy of the ordinance](#).

Listed below are questions and answers concerning the Living Wage provision:

Q: When will the Living Wage be effective?

A: The Living Wage became effective for City contracts October 1, 2000.

Q: What is the current Living Wage?

A: Effective July 1, 2007, the Living Wage will be \$12.75 per hour in all contracts initiated or renewed during the period, July 1, 2007, to June 30, 2008.

UNTIL JUNE 30, 2006, THE LIVING WAGE RATE REMAINS \$12.66.

Q: How was the \$12.75 per hour rate calculated?

A: The Living Wage is a combination of two rates available from Federal government indices. The first is the average poverty threshold for a family of four, as published by the U.S. Department of Health and Human Services in the Federal Register, divided by 2,080. Currently, this threshold is \$20,650 per year or an hourly rate of \$9.93. Second, is the average cost incurred by an employer with 500 or more workers for the provision of health insurance, as reported by the U.S. Bureau of Labor Statistics. Currently, this figure is \$2.82 per hour. These figures are totaled to provide the hourly rate that must be paid to employees of service contractors performing work on city-owned or city-occupied premises. If an employer provides health benefits to its employees, these benefits will be in addition to the specified hourly rate.

Q: How often will the Living Wage change?

A: Annually, as of July 1, the Purchasing Agent shall announce the current Living Wage, as calculated from the two federal indices. This announcement will be made using the Purchasing Division Web Page.

Q: What contracts will be affected?

A: All service contracts performed on City-owned or City-controlled property, except construction, estimated to be greater than \$50,000 in value, that will be formally solicited. Services to be covered include custodial, security, landscape maintenance, parking lot management, etc.

Q: How will the City be certain that contractors pay the Living Wage?

A: All contractors awarded a contract requiring the Living Wage will be required to provide quarterly and annual reports of wages paid to personnel working on City property. The City shall audit and inspect reports and payroll records, as necessary.

[Annual Living Wage Compliance](#)
[Quarterly Living Wage Compliance](#)

Q: How will employees know about the Living Wage?

A: Contractors will be required to post notices in English and Spanish in a format to be provided by the Purchasing Agent. These notices will be posted at work sites and at the contractors' places of business.

Q: What if an employee believes the contractor is not paying the Living Wage?

A: The employee may notify the Purchasing Agent, who shall investigate, and who may order the contractor to pay the proper wage plus interest in the event the contractor has not been complying with the ordinance. Contractors may not retaliate against employees who complain about failure to pay the proper wage rate.

Q: If a contractor fails to pay the wage after notice from the Purchasing Agent, what will occur?

A: The Purchasing Agent has the authority to terminate the contract and debar the contractor from doing business with the City.

Q: If I have other questions, how may I get them answered?

A: Contact the Purchasing Division at (703) 838-4944, write the Purchasing Division at Suite 301, 100 North Pitt Street, Alexandria, VA 22314, or e-mail the Purchasing Agent at willard.walton@alexandriava.gov.

[Back to Purchasing Home Page](#) | [Departmental Information](#) | [Solicitation Board](#) | [Frequently Asked Questions](#) | [Living Wage](#)



To send mail to City Council, other elected city officials and individual City departments, click here.
General City Mail: CityMail@alexandriava.gov
Use the Site Feedback form for technical questions or comments regarding this web site.

DIVISION OF PURCHASING

ALEXANDRIA CITY COUNCIL LIVING WAGE ORDINANCE

Sec. 3-3-31.1 Service Contract Wages.

(a) *Required wage rate.*

(1) Except as otherwise provided in this section, each public contract for the provision of services, awarded after a process of competitive sealed bidding, shall require that the contractor pay each employee assigned to perform services under such public contract, while performing such services on property owned or controlled by the city, an hourly rate equal to:

(i) the average poverty threshold for a family of four, as determined pursuant to the poverty guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services under authority of 42 U.S.C. § 9902(2), divided by 2,080, plus

(ii) the average cost per hour incurred by an employer, on behalf of each employee, for the provision of health insurance, as determined by the U.S. Bureau of Labor Statistics (U.S. Bureau of Labor Statistics, Table 8, Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Private industry workers, by establishment employment size, 500 or more workers).

(2) For purposes of subparagraph (a)(1) above, the initial required wage rate shall be computed based upon the average poverty threshold for a family of four, as determined pursuant to the poverty guidelines updated annually in the Federal Register by the U.S. Department of Health and Human Services under authority of 42 U.S.C. § 9902(2), for 2000, and the costs for health insurance, as determined by the U.S. Bureau of Labor Statistics (U.S. Bureau of Labor Statistics, Table 8, Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Private industry workers, by establishment employment size, 500 or more workers), in March of 1999.

(3) If either the U.S. Department of Health and Human Services or the U.S. Bureau of Labor Statistics discontinues the determinations used to establish the required wage rate, the city manager, in his discretion, shall adopt a substitute procedure to establish the required wage rate, which reasonably reflects the average poverty threshold for a family of four or the average cost per hour incurred by an employer, on behalf of each employee, for the provision of health insurance, as applicable.

(4) The contractor under each such public contract shall include the provisions of this subsection (a) in every subcontract so that such provisions, and the other provisions of this section 3-3-31.1, will be binding upon each subcontractor. When a contractor undertakes a public contract subject to this section 3-3-31.1, the contractor agrees to assume the

obligation that this section's wage requirements will be observed in fulfilling the requirements of the public contract. This obligation may not be relieved by shifting all or a part of the work under the public contract to another, and the contractor shall be jointly and severally liable with any subcontractor for any underpayment of wages on the part of any such subcontractor. The appropriate enforcement sanctions under this section may be invoked against both the contractor and any such subcontractor in the event of such subcontractor's failure to comply with any of the provisions of this section
3-3-31.1.

(5) The required wage rate set forth in subparagraph (a)(1) above shall be paid without contemporaneous or subsequent deduction or rebate of any nature, except such payroll deductions as are required or permitted by law, by a collective bargaining agreement, or by specific written authorization from an employee.

(b) Adjustments. The wages required to be paid under subsection (a) above shall be adjusted as of July 1 of each year to reflect the most current determinations made by the U.S. Department of Health and Human Services and the U.S. Bureau of Labor Statistics and shall be applicable to any public contract awarded thereafter until the date of the next adjustment; provided, however, the wage rates in effect at the time a public contract is awarded to a contractor by the city shall remain in effect under such public contract during its original term. At the time of the exercise by the city of any renewal option under a public contract, the required wage rate shall be adjusted as provided above, and as adjusted, shall remain in effect during the renewal term.

(c) Limits on applicability. The provisions of this section shall not apply to public contracts for professional services, contracts for construction, construction management contracts, design-build contracts or contracts for services procured under sections 3-3-71, 3-3-72, 3-3-73 and 3-3-74, as amended. Nor shall the provisions of this section require payment of the required wage rate to persons employed by a contractor and incarcerated at the city jail.

(d) Publication and notice.

(1) As soon as possible after the annual determination of the required wage rate, as adjusted pursuant to subsection (b) above, the purchasing agent shall publish such rate in English and Spanish on the purchasing division's world wide web site.

(2) The then current required wage rate shall be posted by each contractor in English and Spanish, on such form as shall be provided by the purchasing agent, in a prominent place at its offices and each location where its employees perform services under a public contract.

(3) Within five days of an employee's request, a contractor shall provide to such employee a written statement in English and Spanish, on such form as shall be provided by the purchasing agent, of the then current required wage rate.

(4) Notice of the required wage rate shall be stated in the procurement solicitation, as required by subsections 3-3-44(b) and 3-3-66(b) of this code.

(e) Records and reports. Each contractor and its subcontractors subject to the provisions of this section 3-3-31.1 shall:

(1) for a period of three (3) years after the expiration or earlier termination of the applicable public contract, keep and preserve records which show wages and benefits provided by such contractor and its subcontractors to each employee assigned to perform services under such public contract. The purchasing agent, or his designee, shall have the power to examine such records at reasonable times and without unreasonable interference with the business of such contractor or its subcontractors, for the purpose of administering and enforcing the provisions of this section, and to make copies of all or any parts thereof; and

(2) on a quarterly and annual basis during the term of the applicable public contract, submit to the purchasing agent a report, in a form acceptable to the purchasing agent, which shows hourly wage rates, wages and benefits provided by such contractor and its subcontractors to each employee assigned to perform services under such public contract, and such other information as may be required by the purchasing agent.

(f) Additional contract requirements.

(1) Any contractor subject to this section shall, as a term of the public contract, further comply with all applicable federal, state and city laws, rules and regulations including, but not limited to, the U.S. Fair Labor Standards Act of 1938, as amended, the U.S. Occupational Safety and Health Act of 1970, as amended, the U.S. Employee Retirement Income Security Act, as amended, and Chapter 3 of Title 40.1 of the Code of Virginia, 1950, as amended. The violation of any such laws, rules or regulations by a contractor, as determined by the purchasing agent, shall be grounds for termination of such public contract, and debarment of such contractor, in accordance with the procedures set forth in article F, chapter 3, title 3.

(2) As an additional term of the public contract, no contractor shall discharge, reduce the compensation of, or otherwise retaliate against any employee who files a complaint with the purchasing agent, or takes any other action to enforce the requirements of this section or a public contract subject to this section.

(g) Enforcement.

(1) Within six months of a contractor's or subcontractor's failure to comply with the wage requirements of a public contract, an aggrieved employee may file a complaint with the purchasing agent, requesting that the purchasing agent enforce the wage requirements of such public contract. In the event that the purchasing agent determines that the employee has not received the wages required under this section 3-3-31.1, the purchasing agent shall direct the payment forthwith of such wages, plus interest at the judgment rate from the date originally due, and less any deductions required or permitted by law. Failure of a contractor or subcontractor to comply with the directive of the purchasing agent shall be grounds for termination of such public contract and debarment of such contractor or subcontractor, in accordance with the procedures set forth in article F, chapter 3, title 3.

(2) Any contractor or subcontractor which fails to pay an employee the wage required by this section shall be liable to the employee affected in the amount of the unpaid wage, plus interest at the judgment rate from the date originally due, and less any deductions required or permitted by law.

(3) Any employee assigned to perform services under a public contract subject to the requirements of this section 3-3-31.1 shall be deemed a third party beneficiary of this section and the provisions mandated by this section in any public contract.

(h) Administrative Procedures. Subject to the approval of the city manager, the purchasing agent may promulgate such additional procedures, not inconsistent with the provisions of this section, and consistent with the procedures for the procurement of services, as he deems necessary and appropriate to effect and enforce the provisions of this section.

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To send mail to City Council, other elected city officials and individual City departments, click here.
General City Mail: CityMail@alexandriava.gov
Use the Site Feedback form for technical questions or comments regarding this web site.

City of Alexandria

Annual Living Wage Compliance Report

Contract Number: _____ Date: _____

Authorized Signature*: _____ Printed name: _____

Company Name: _____

Company Address: _____

This report is to be submitted every twenty (20) prior to contract renewal date. All personnel working on City of Alexandria property or City of Alexandria occupied property, regardless of hourly wage rate, except construction projects, shall be listed. (You may use additional sheets, if needed.)

EMPLOYEE NAME	TOTAL HOURS ON CITY PROJECT	HOURLY WAGE	TOTAL WAGES FOR CONTRACT YEAR

Total Employee Wages paid on this contract: _____

In order to renew your contract and audit your compliance with the City's Living Wage Ordinance, please complete this report and submit it to the City of Alexandria, Purchasing Division, 100 North Pitt St., Suite 301 – Banker's Square, Alexandria, VA 22314.

*Signing this form certifies that the information provided is current, accurate, and complete.

City of Alexandria

Quarterly Living Wage Compliance Report

Quarter: _____ to _____

Contract Number: _____ Date: _____

Authorized Signature*: _____ Printed name: _____

Company Name: _____

Company Address: _____

This report is to be submitted every three (3) months. All personnel working on City of Alexandria property or City of Alexandria occupied property, regardless of hourly wage rate, except construction projects, shall be listed. (You may use additional sheets, if needed.)

EMPLOYEE NAME	TOTAL QUARTERLY HOURS ON CITY PROJECT	HOURLY WAGE	TOTAL WAGES FOR QUARTER

In order to audit your compliance with the City's Living Wage Ordinance, please complete this report and submit it to the City of Alexandria, Purchasing Division, 100 North Pitt St., Suite 301 – Banker's Square, Alexandria, VA 22314.

*Signing this form certifies that the information provided is current, accurate, and complete.

City of Charlottesville, VA

Sec. 22-9. Living wage requirement.

(a) Except as otherwise provided in this section, every city contract for the provision of non-professional services, awarded after a process of competitive sealed bidding, shall require that the contractor pay each employee assigned to perform services under the contract, while such employee is performing such services on property owned or controlled by the city, a wage no less than the lowest hourly wage paid by the city to its own employees ("living wage").

(1) This living wage requirement shall be identified and set forth within the procurement solicitation applicable to the service contract.

(2) Each bidder for the contract shall be required to certify that, upon award of the contract he will comply with the living wage requirement set forth in paragraph (a), above. Any contractor who knowingly makes a false statement in such certification, or who fails to comply with such living wage requirement during performance of the contract, shall be subject to loss of the contract and to debarment.

(b) The provisions of this section shall not apply to the following:

(1) Contracts for construction services or for construction management services, contracts for mail delivery services, or contracts for the purchase or lease of goods;

(2) Contracts for the provision or administration of any public assistance programs as defined in Va. Code § 63.1-87, mental health programs, substance abuse programs, housing programs, the fuel assistance program, services provided by or in association with community services boards, or the purchase of services under the Comprehensive Services Act for At-Risk Youth and Families or the Virginia Juvenile Community Crime Control Act;

(3) Contracts procured through cooperative procurements, sole source procurements, emergency procurements, small purchase procedures, or competitive negotiations procedures, and transactions exempted from competitive procurement pursuant to section 22-5 of this chapter; and

(4) Contracts with public bodies.

(11-15-04(3))

Chapter 22 CITY PROCUREMENT OF GOODS AND SERVICES FROM NON-GOVERNMENTAL SOURCES*

1.

*Editor's note: An ordinance adopted Nov. 15, 2004, repealed Ch. 22, in its entirety, and enacted provisions designated as a new Ch. 22 to read as herein set out. Prior to inclusion of said ordinance, Ch. 22 pertained to public procurement. See also the Code Comparative Table.

Cross references: Execution of contracts, § 2-7; finance, Ch. 11.

State law references: Virginia Public Procurement Act, Code of Virginia, § 11-35 et seq.

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